

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

# UNITED STATES DISTRICT COURT

for the

FILED  
IN CLERK'S OFFICE  
2020 OCT 16 AM 4:03  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

Eric L. Levine

*Petitioner*

v.

Federal Bureau of Prisons

Case No. \_\_\_\_\_

*(Supplied by Clerk of Court)**Respondent**(name of warden or authorized person having custody of petitioner)*

## PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

### Personal Information

1. (a) Your full name: Eric L. Levine
- (b) Other names you have used: Eric Levine
2. Place of confinement:
  - (a) Name of institution: Home confinement pursuant to 34 U.S.C. s. 60541(g)(1)(A)
  - (b) Address: 101 Kilsyth Road  
Brighton, MA 02135
  - (c) Your identification number: 26928038
3. Are you currently being held on orders by:
 

☒ Federal authorities      ☐ State authorities      ☐ Other - explain: \_\_\_\_\_
4. Are you currently:
 

☐ A pretrial detainee (waiting for trial on criminal charges)

☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

  - (a) Name and location of court that sentenced you: United States District Court For the District of Massachusetts
  - (b) Docket number of criminal case: 080Cr10121 FDS
  - (c) Date of sentencing: 10/13/2020

☐ Being held on an immigration charge

☐ Other (explain): \_\_\_\_\_

### Decision or Action You Are Challenging

5. What are you challenging in this petition:
 

☒ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

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- ☐ Pretrial detention
- ☐ Immigration detention
- ☐ Detainer
- ☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☐ Other (explain): \_\_\_\_\_

## 6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Federal Bureau of Prisons, North East Regionnot taking action on request for time served as applied by the First Step Act(b) Docket number, case number, or opinion number: NA

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

Failure to respond to Request for Administrative Relief requesting time credits for time served and other timecredits based on the First Step Act, 34 U.S.C. s. 60541 ss. (g)(1)(A), (g)(5)(A), (g)(1)(c) 18 U.S.C. s. 3585(b), 18 U.S.C. s. 3582(c), (1)(A)(i)(d) Date of the decision or action: 10/13/2020**Your Earlier Challenges of the Decision or Action**7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Federal Bureau of Prisons North East Region(2) Date of filing: 08/25/2020(3) Docket number, case number, or opinion number: na(4) Result: No response

(5) Date of result: \_\_\_\_\_

(6) Issues raised: Petitioner is on home confinement under the First Step Act 34 U.S.C. s. 60541(g)(1)(A)  
in the legal custody of the North East Region and not confined to a Federal Bureau of Prisons, Institution  
Petitioner requested credit for prior home confinement consistent with First Step Act and other relief  
including additional good time and elderly compassionate relief granted by the Act

(b) If you answered "No," explain why you did not appeal: This is the first appeal8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☒ No

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(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not file a second appeal: No response to initial administrative filing this petition is first level of appeal of the failure of the Region to respond/answer to request for administrative relief

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not file a third appeal: \_\_\_\_\_

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☒ Yes☐ No

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If "Yes," provide:

- (1) Name of court: U.S. District Court for District of Massachusetts
- (2) Case number: unknown as of this filing
- (3) Date of filing: 05/10/2011
- (4) Result: denial
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: arrest of trial team member about interference with trial representation

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes☒ No

If "Yes," provide:

- (1) Name of court: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Date of filing: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: \_\_\_\_\_

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: This action is based on administration of sentence and failure to apply all qualifying sections of the First Step Act, including 34 U.S.C. s. 6054(g)(1)(A) , B.O.P. Program Statement : 5050.50 and 5160.05, 18 U.S.C. s. 3585(b) and 34 U.S.C. s. 60541(g) as further presented in Memorandu in support filed with this Court.

**11. Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☐ Yes☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: \_\_\_\_\_
- (b) Date of the removal or reinstatement order: \_\_\_\_\_
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes☐ No

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If "Yes," provide:

(1) Date of filing: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result: \_\_\_\_\_

(5) Issues raised: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☐ No

If "Yes," provide:

(1) Name of court: NA

(2) Date of filing: \_\_\_\_\_

(3) Case number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes

☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: \_\_\_\_\_

(b) Name of the authority, agency, or court: \_\_\_\_\_

(c) Date of filing: \_\_\_\_\_

(d) Docket number, case number, or opinion number: \_\_\_\_\_

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

(g) Issues raised: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Grounds for Your Challenge in This Petition**

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE:** Failur to act upon request for administrative relief and/or grant relief based on request for time served credit due to First Step Acr amendments interpreting home confinement as equivalent of detention, and credit nun pro tunc

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

See memorndum

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes

☐ No

**GROUND TWO:** That the Bureau of Prisons falied to credit Petitioner for time credits authorized by the First Step Act, based on the Risk Assesment and the award of time credits for work/programing after the First Step Act became law and or award time credits for compassonate relief based on Petitioner's age as also allowed by the First Step Act taking into account Petitioner's work, civic and religious activity under home confinement

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

See memorandum in support

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☐ No

**GROUND THREE:**

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☐ No

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**GROUND FOUR:**

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

**Request for Relief**

15. State exactly what you want the court to do: 1 award Petitioner credit for time served nun pro tunc based on the First Step Act 2. Award Petitioner credit for work/programming after the Attorney General issued the risk assessment; and or cc compassionate release based on Petitioner's age and record

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**Declaration Under Penalty Of Perjury**

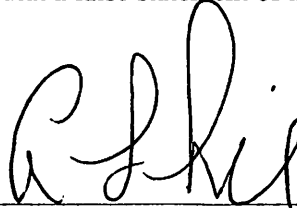
If you are incarcerated, on what date did you place this petition in the prison mail system:

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I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

10/15/20



*Signature of Petitioner*

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*Signature of Attorney or other authorized person, if any*